



## Have Public Servants Charged with Protecting Drinking Water for 15 Million People Sold Out to the Gas Drilling Industry?

By Nora Eisenberg, AlterNet

Posted on January 23, 2011, Printed on January 25, 2011

<http://www.alternet.org/story/149641/>

Over the past decade, 34 states have succumbed to the hazardous and largely unregulated hydraulic fracturing (widely known as "fracking") of deep shale formations to extract natural gas. This radical drilling method, blasting its way from Texas and the Rockies, through Louisiana and Arkansas to the east, has wreaked havoc, turning large swathes of the nation sitting above shale formations into industrial zones, degrading landscapes, economies, land values, air quality, and perhaps most importantly, water.

But on the eastern edge of the Marcellus Shale, the nation's largest shale formation extending from New York and Pennsylvania to West Virginia, the multi-state entity responsible for protecting the historic and vibrant river and its vast basin, much of which lies above the Marcellus, halted the process. In May 2009, the Delaware River Basin Commission (DRBC), which consists of the governors of New York, Delaware, Pennsylvania and New Jersey, as well as the commander of the U.S. Army Corps of Engineers North Atlantic Division, issued an Executive Director Determination (EDD) that put a moratorium on permits for new production gas drilling projects in the shale layers. Then in June 2010, the Commission issued a Supplemental Executive Director Determination (SEDD) extending its permit moratorium to include exploratory well projects, with one important proviso -- 14 exploratory wells already granted state permits could proceed.

The Supplemental Determination on exploratory wells pleased few. Drilling interests, which wanted immediate revenues, regarded the moratorium on test wells as an unfair limitation. Anti-drilling advocates, who claimed that building exploratory gas wells is as dangerous as fracking, saw the grandfathering of the 14 wells as reckless. Each side -- drillers Newfield Appalachia PA and Hess Corporation joined by the North Wayne Property Owners Alliance and anti-drilling groups Damascus Citizens for Sustainability and Delaware Riverkeeper Network, joined by Bucks County's Nockamixon Township--petitioned for an administrative hearing. At its meeting on July 14 of last year, the Commission agreed to comply: In December 2010 (later extended to January 2011) DRBC said it would conduct several days of hearings in which each side could testify and present expert testimony on exploratory wells.

But then at its December 8 meeting, DRBC canceled the hearing, explaining in a statement that it "made the decision in accordance with the recommendation of the hearing officer" in

his letter of December 6. This letter stated that since the drilling interests had either already completed the exploratory wells in question or had agreed to submit the wells to Commission review once they were completed, the matter of the exempted wells was moot. Any ensuing problems in exploratory wells could be addressed at a later time.

But by then, anti-drilling advocates say, irreparable harm might be done. Dug a mile into the shale to test the suitability of a site for fracking, exploratory wells are often developed into production wells that use hydrofracking for gas extraction. Fracking aside, the construction of exploratory wells is dangerous, the anti-drilling experts' reports argue, due to the very nature of exploration, the toxic chemicals used in construction (which may contaminate aquifers and air alike), the release of naturally occurring radioactive material, and more. As for the many other issues the anti-drilling co-appellants sought to present at the hearing -- including the DRBC's Rules of Practice and Procedure and the "inappropriate communication between the Commission and industry" -- cancellation ended an opportunity for their public airing.

It's unknown what happened between July 2010, when the hearing was planned, and December 2010 to cause the abrupt cancellation. But possible industry influence beckons for attention.

### **Possible Players and Moves**

The December 6 letter was signed by hearing officer, Edward N. Cahn, on his law firm's letterhead. In August, when Cahn was appointed, the DRBC and the media identified him as a retired federal judge of the Eastern District of Pennsylvania, and later its chief justice, a distinguished jurist for whom both the Federal Building and United States Courthouse in Allentown had been renamed. At the time, there was little if any press mention of the fact that Judge Cahn, since retiring from the bench, had served at the law and lobbying firm Blank Rome as "of counsel," a title that allows firms to gain both prestige and business from retired judges who in turn gain income from revenues. No doubt both sides knew of the judge's 11-year service at Blank Rome, but his area of expertise in the large and diverse firm was intellectual property and mediation.

Moreover, though Blank Rome LLC did extensive legal work and lobbying for industry, including oil and gas, through its sister corporation Blank Rome Government Relations LLC, it had no connection with Marcellus Shale development, about which the DRBC would be holding hearings.

Or did it?

- On August 6, 2010, the same day Judge Cahn was recommended as hearing officer by Delaware Governor-Elect, Jack Markell, Blank Rome partner Lynn McKay, co-published with Marcellus Shale Coalition president and executive director Kathryn Klaber, a Q&A article on the Marcellus Shale for the webzine of an industry group, the Women's Council on Energy and the Environment (WCCE).

(The Marcellus Shale Coalition is the industry group that promotes fracking throughout the Marcellus; its members include hundreds of drillers and their industry partners.)

- On October 10, 2010, I've learned, Blank Rome sent internal email to employees stating that there were opportunities for the firm in the Marcellus Shale and that the firm was pursuing them. Judge Cahn wrote back saying he was involved in a hearing about the Marcellus.
- A January 14, 2011 check of the Blank Rome's Web site indicated that Klaber, McKay (whose article, "Marcellus Groundwater Claims," appeared in *World Oil* last month) and Blank Rome partner Margaret Hill ("one of the country's leading environmental litigators") would host a "webinar" on January 20, the subject of which would be the Delaware River Basin Commission's recently issued draft of the Marcellus Shale regulations.
- A January 17 a web check showed that Blank Rome was listing itself as an associate member of the Marcellus Shale Coalition. (The "associate" category for businesses supporting the Marcellus Shale drilling projects -- legal firms, public relations, lobbying, construction, etc.)
- On January 18, I phoned and emailed both the MCS and BR to learn when the membership began (BR was not listed on MSC's member list) and the nature of their cooperation but have received no response. (Since then, the Marcellus Shale Coalition at its annual meeting on January 20, announced new members, including Blank Rome, and amended its online members listing.)
- On January 18, Judge Cahn emailed DRBC secretary and assistant general counsel Pam Bush, I have learned, stating that he had just seen Blank Rome's associate membership in the Marcellus Shale Coalition listed on the firm's Web site. He expressed his embarrassment and regret and his willingness to recuse himself from further involvement with the DRBC hearing process should that be requested.

But by then this recusal was moot -- the hearing had been canceled over a month earlier. And the many issues that environmental co-appellants wanted to present at the hearing, including "inappropriate" communication between DRBC and industry, will go unheard.

Anti-drillers also have questions about the beginning of the hearing process.

At the September 2, 2010 initial meeting of Judge Cahn and co-appellants and their counsels for the purpose of establishing a plan for moving forward with the proceeding the judge gave the pro-drilling side more time to prepare. It had until November 15 to submit its list of experts and until November 24 for submission of written expert reports while the anti-drilling side had only until October 1 to submit its list of experts and until November 1 for submitting expert reports.

This meant the industry and its experts had an additional month to read and review the anti-drilling side's reports, and an additional month to develop rebuttals. With the hearing scheduled at the time for December 13-17, Judge Cahn's schedule gave the anti-drilling group only two weeks to review the other side's expert reports and develop its rebuttals.

When the hearing was postponed to January, the due dates were postponed but still gave the pro-drilling side a month's advantage. The anti-drilling side had to have its reports in by November 19. The pro-drilling side had until December 2 for the list submission (which it submitted), but the hearings were canceled long before the December 29 due date for expert reports, which were never submitted.

While sequential expert report exchange is common in cases with long discovery periods in expedited cases such as this one, simultaneous report exchange is more common. At the September 2 meeting, the transcript shows, the anti-drilling side asked for simultaneous exchange, but Judge Cahn made it clear that it was his courtroom and his decision to make.

### **Other Curious Figures and Facts**

Blank Rome's roster is studded with the names of attorneys and lobbyists who have worked for a prominent natural gas industry adviser, namely Tom Ridge, who in August came on board with his two lobbying groups to advise and lobby for the Marcellus Shale Coalition.

To name but a few:

- Ashley Davis, a Blank Rome Government Relations principal, served as special assistant to former director of Homeland Security, Tom Ridge, after being a member of the Bush-Cheney transition team.
- Carl Buchholz, another principal of Blank Rome's lobbying side, served as special assistant to the Office of Homeland Security (OHS), before that serving as general counsel to Tom Ridge's gubernatorial campaign and transition team. BR associate Scott Coburn was the regional political director for former Pennsylvania Governor Tom Ridge's 1998 gubernatorial campaign.
- BR partner Howard Burde served as deputy general counsel to Governor Tom Ridge.
- BR's Mark Holman served as a Blank Rome lobbyist. Before joining Blank Rome in 2003, Holman was Chief of Staff for Governor Tom Ridge from 1995-2000 and then in the Office of Homeland Security under Ridge until 2003. Now Holman is heading up the Washington office of Ridge's new lobbying firm, Ridge Policy Group, launched shortly before Ridge came to work for MSC, receiving with Ridge's older lobbying group (Ridge Global) almost \$1 million for a year's worth of advisement and lobbying.

The migration of Tom Ridge's staff from OHS to Blank Rome provides a stunning instance of the ongoing revolving door practice that maintains industry's grip on U.S. politics. Ethics regulations required a one-year wait before lobbying their old colleagues, but using a technicality -- they had never worked for the Department, only the *Office* of Homeland Security--they were able to wiggle their way out of the law and lobby and secure numerous DHS contracts for BR clients. Not only did Ridge allow this to happen, but, as a 2005 [AP article suggested](#), he shepherded his top staff to the greener pastures. According

to AP reporter Joel Roberts, the day after Bush announced his appointment, Ridge took the first of two vacations with his wife in Scottsdale, Arizona, at the home of David Girard-DiCarlo, a major Bush fundraiser and security, military and energy industry lobbyist. The next month Girard-DiCarlo's firm, Blank Rome, hired Bucholz and Holman, and others followed soon after.

And, of course, the close relationship has continued. Recently, Ridge Global, under Holman's leadership, hired Blank Rome as lobbyists for government issues, as the Sunlight Foundation has documented.

In the six months since Tom Ridge and his associates at Ridge Global and Ridge Policy Group began advising and lobbying for MSC, much has happened. The DRBC moratorium and hearing of stakeholders, which used up so much time, energy, and funds of advocacy groups (with the environmentalists paying some \$22,000 for expert reports that never got heard) is now history. (Reports are now available online.) Only one commissioner -- the New York governor's representative -- of the four governors and federal representative voted to continue the DRBC hearing and let the environmentalist side have its day in court.

It's not clear what kind of lobbying and advisement has gone on, but in the months to come more may come to light. In his first speech for MSC, on August 17, Ridge spoke of the God-given and job-giving opportunity of the Marcellus Shale, and how helping with this great venture made him feel more like a governor than any time since leaving office. Could the former governor, who felt like a governor again, have spoken to other governors who make up the Commission, or had his people with years of expertise with governors and government entities speak to DRBC's people? Or did Blank Rome do the talking for Ridge and Co -- and to whom?

### **Now What?**

DRBC's decisions, such as the moratoriums, have come down through the executive director's "Determinations." But the Commission has been promising a set of actual regulations. And now a draft of the much awaited regulations to "protect the water resources of the Basin during the construction and operation of natural gas development projects" is available, released December 9. When revised and approved, the regulations will supersede the earlier and often controversial determinations. But the 90-day period allotted for comments is brief and the public meetings limited to three sites, with none scheduled for much affected places like New York City and Philadelphia, where the community boards, and leaders including the mayor, have come out against fracking in the Delaware River Basin, from which New Yorkers (and some eight million additional people in four states) get their water. The cost of bonds that drillers must post as collateral for infrastructure and/or environmental damages have been reduced from earlier Commission determinations, potentially burdening the people with the cost of remedying industry's destruction. Moreover, the new regulations are not informed by a cumulative impact study but consider impact per well in an area where thousands of wells are being proposed.

How MSC and DRBC -- and Ridge's firms and Blank Rome LLC and Blank Rome Government Relations -- will approach this next stage and renewed commentary and criticism remains to be seen. Tom Ridge will have at his side at Ridge Global Duncan Campbell III, director of intergovernmental affairs for the Office of Homeland Security where he served as the primary liaison to the nation's state and local public officials and also served as executive director to the Republican Governors Association. And Mark Holman will have in the Harrisburg Office of Ridge Policy Mark Campbell, director of intergovernmental affairs at OHS, functioning as prime liaison to the country's state and local officials, and executive director to the Republican Governors Association.

The cumulative impact of all of these overlapping interests and revolving industry-government positions warrants its own study. What's clear, and not at all unusual, is that hardworking citizens must do the monitoring that our taxes pay others to do for us. For the residents of the Delaware River Basin, the majority of whom are concerned about the impact of gas drilling on water quality (79 percent of Pennsylvanians according to a recent poll by the nonprofit Civil Society Institute), ensuring that the Delaware River Basin Commission protects the region's waters is essential not only to the quality of life in the beautiful region but to the continuation of life itself with clean, uncontaminated water we are promised by law.

*Nora Eisenberg's work has appeared in the Village Voice, Tikkun, the Los Angeles Times, the Nation, and the Guardian UK. Her most recent novel, "When You Come Home" (Curbstone, 2009), explores the legacy of the 1991 Gulf War.*

© 2011 Independent Media Institute. All rights reserved.

View this story online at: <http://www.alternet.org/story/149641/>

[w2]